IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

Bail Appl..No. 7194 of 2007()

(CRIME NO.431/07 OF PERAMBRA POLICE)

PETITIONERS/ACCUSED 1 & 2:

1. **C.RADHAKRISHNAN, S/O KUNHIRAMAN NAIR, CHALAKOTH HOUSE, EDAVARAD P.O., PERAMBRA, KOZHIKODE DIST.**

2. **HAMZA.N, S/O MOIDEEN, NANHALLOOR, EDAVARAD P.O., PERAMBRA, KOZHIKODE DIST.**

BY ADV. SRI.SANTHARAM.P

RESPONDENT: COMPLAINANT & STATE:

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R. BASANT, J.

B.A. No. 7194 OF 2007

Dated this the 21st day of November, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused Nos.1 and 2. Altogether there are two accused persons. The case against the petitioners is that in furtherance of their common intention to defraud the defacto complainant they induced him to believe that the cheque leaf of the 2nd accused is really that of the first accused. A1 put signature in the said cheque and handed over the same to the defacto complainant who failed to accept the same. It is the case of the defacto complainant that the intention of accused 1 and 2 was to defraud him.

2. The learned counsel for the petitioners submits that the petitioners are innocent. The blank cheque was handed over by A2 to another person(brother in law of the defacto complainant) without taking anybody's signature and that cheque was misutilised by the defacto complainant to raise false allegations against the petitioners.

3. The learned Public Prosecutor opposes the application. There are no circumstances whatsoever justifying or warranting the invocation of jurisdiction under section 438 Cr.P.C.

4. Having considered all the relevant inputs, I find merit in the

opposition by the learned Public Prosecutor. I am satisfied that there are no features in this case which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

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